Supreme Court, U.S.
FILED
MAR 8 - 2016
OFFICE OF THE CLERK

No. 15-674

In the Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR PROFESSIONAL ECONOMISTS AND SCHOLARS IN RELATED FIELDS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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INTEREST OF AMICI CURIAE[1]

Amici are professional economists and other academics working in closely affiliated fields. Amici research, publish, and teach courses on economic policy, labor markets, public policy, and related issues. Additional information about each amicus is set forth in the Appendix.

Amici understand that one issue raised in this case concerns the eligibility of recipients of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and expanded Deferred Action for

[1] All parties have consented to the filing of this amicus curiae brief. No counsel for any party authored this brief in whole or in part, and no person or entity, other than amici curiae or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Childhood Arrivals (DACA) to apply for work authorization. See U.S. Br. 63 ("The real focus of respondents' legal objection is not deferred action itself, but the availability of work authorization as a result.").

In order to assist the Court in its consideration of that issue, this brief analyzes the economic, fiscal, and public policy rationales behind the granting of work authorization to persons who receive temporary protection from deportation through deferred action. Amici focus in particular on the direct effects of work authorization on the wages and economic opportunities of the newly authorized as well as the indirect effects on their households. Amici also discuss broader economic and fiscal effects of work authorization, including the potential effects on native-born workers and other authorized immigrant workers, and the effects on economic activity as well as federal, state, and local tax revenues.

Amici understand that Congress and immigration officials, over many years, have embraced the policy of allowing individuals granted deferred action to request permission to work legally. Amici are not lawyers and therefore defer to others to assess the historical development of these statutes and regulations and to analyze their legal significance. Nonetheless, amici believe that—by describing the strong economic, fiscal, and public policy rationales supporting the decision to make deferred action recipients eligible to apply for work authorization—their expertise in economic policy can assist the Court as it considers the arguments raised in this case.

INTRODUCTION AND SUMMARY

Concrete and significant economic benefits flow from allowing those individuals granted deferred action to work lawfully while present in the United States. As set forth in more detail below, allowing such individuals to work lawfully moves workers out of the informal economy, increases wages, improves working conditions, enhances economic opportunity, and expands the tax base. Work authorization is particularly significant to the individuals eligible to apply for deferred action and work authorization under the initiatives at issue in this case, and to their entire families, including U.S. citizens and Lawful Permanent Residents (LPRs), as it could lift a sizeable percentage of affected families out of poverty. At the same time, providing work authorization to those eligible for deferred action will not displace native U.S. workers.

As background, under the initiatives at issue in this case, individuals meeting certain criteria can apply to the Department of Homeland Security (DHS) for deferred action (*i.e.*, deferral of removal for a period of time) and for authorization to work lawfully during the time they are allowed to remain in the United States. The DHS Memorandum establishing this process focuses on two categories of individuals.[2] First, it expands eligibility for Deferred Action for Childhood Arrivals (DACA) to encompass, *inter alia*, qualifying in-

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[2] Dep't of Homeland Security Memorandum, *Expanding Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* 3-4 (Nov. 20, 2014).

dividuals who were brought to the United States as young children so many years ago that they were more than 31 years of age when the DACA policy was first announced, in June 2012. Second, the DHS Memorandum creates a process, known as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), by which certain parents of U.S. citizens and lawful permanent residents may register with the government, submit to background checks, pay a fee, and affirmatively request temporary protection from deportation (*i.e.*, deferred action). As explained in the DHS Memorandum, individuals who are granted deferred action are also "eligible to apply for work authorization for the period of deferred action" pursuant to separate and preexisting statutory authority.[3] As Petitioners explain (at 50), the DHS Memorandum continues a longstanding practice: the "INS and DHS have authorized lawful work by aliens who remain in the United States under every deferred-action or similar policy since at least the early 1970s."

After assessing a large body of economic and public policy research, amici reach the following conclusions about the economic rationales for providing work authorization to individuals temporarily allowed to remain in the country, including those eligible to apply for such protection under the DHS Memorandum.

I.A. As a general matter, providing work authorization to individuals who are present in the United States creates a range of economic benefits for these

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[3] *Id.* (citing Immigration and Nationality Act § 274A(h)(3), 8 U.S.C. 1324a(h)(3)).

individuals and their families. Work authorization reduces the need for these individuals to resort to work in the informal economy to make ends meet and increases the proportion of workers in the formal economy.

I.B. Flowing from the move to the formal economy, work authorization will likely result in a wage increase for newly authorized workers. In the short term, the wage increase would result through better skills-matching between formerly unauthorized workers and their employers. In the longer term, these newly authorized workers may have greater ability, and therefore stronger incentives, to invest in themselves by acquiring skills valued in the U.S. labor market. Previous research by the U.S. Department of Labor and independent academic research suggests wage increases on the order of 6% to 15% in the short to medium term.

I.C. Providing work authorization to individuals allowed to remain in the United States will generate a broader set of economic and public policy benefits as well. These benefits include increasing the ability of workers, immigrant and native alike, to access worker protections; leveling the playing field for law-abiding businesses that are now at a competitive disadvantage to businesses that do not abide by the law; ensuring that authorized workers are not undercut by competing against a population uniquely at risk of being exploited; and increasing Social Security revenue and tax revenue, as well as gross domestic product (GDP).

II. The positive economic effects of work authorization are particularly meaningful to the people eligible for DAPA and expanded DACA, as well as their fami-

lies. The people eligible under the deferred action policies at issue in this case (especially DAPA) are very frequently key wage earners in households that are home to millions of native-born U.S. citizens. The earnings boost they would receive through becoming authorized workers would indirectly benefit these households, many of which have relatively low incomes and a sizable minority of which are now below the federal poverty line. Due to the estimated wage increases that DAPA beneficiaries would receive by virtue of being eligible to apply for work authorization, 6% fewer DAPA families would be living in poverty. By contrast, pursuing removal of the intended beneficiaries of these initiatives would push many of these households into deep poverty, as the intended beneficiaries of deferred action are the primary wage earners in these relatively low-income households. And, given that fact, permitting key wage earners to remain in the United States without extending the ability to request work authorization either implicitly sanctions the reality that they will continue their unauthorized employment or assumes—perhaps improbably—that they will drop out of the labor market and become a burden on their entire households and the broader community.

III. While providing work authorization creates a range of positive economic benefits, it is unlikely to have meaningful negative economic consequences. In particular, work authorization for individuals granted deferred action pursuant to the DHS Memorandum would be unlikely to adversely impact the earnings and employment of native-born workers.

In sum, providing work authorization to individuals who are eligible for deferred action generates a range

of positive economic benefits—especially for families and households with U.S. citizen and LPR children—and there is little reason to predict countervailing economic harm to native-born workers and U.S. businesses. As such, there are substantial economic and public policy rationales for why Congress has allowed work authorization to be extended to those individuals granted deferred action, and why administrations have pursued such an approach for decades.

ARGUMENT

I. Providing Work Authorization To Individuals Granted Deferred Action Results In Higher Wages For Workers And Additional Economic Benefits

A substantial economic literature establishes that the expansion of work authorization to individuals who are granted deferred action results in an increase in wages as well as a range of additional economic benefits. The research studies discussed below differ in terms of time period studied, the methodology used, as well as the disciplinary training of the investigators (mostly economists, sociologists and demographers). Nonetheless, a fairly consistent picture emerges from the diverse studies. Unauthorized workers earn less than they would with work authorization, and education and experience are not rewarded in the segment of the labor market occupied by unauthorized workers. While the range of estimates varies from study to study, we believe a range of 6% to 15% increase in

wages captures the findings of the corpus of work on this topic.[4]

Work authorization increases wages for several reasons. *First*, as discussed in Section I.A, *infra*, unauthorized workers face a limited set of employment opportunities in the informal economy. Their opportunity set is, to a large extent, limited to those firms or individuals willing to hire workers who are not authorized to work in the United States. Such employment opportunities tend to involve low-skilled work and, often, informal temporary employment. In such circumstances, workers are more likely to be poorly matched to jobs that do not make full use of their skills and aptitudes.

Second, unauthorized workers are at a bargaining disadvantage in the labor market. Given the constricted set of employment opportunities and the limited number of employers willing to hire unauthorized workers, these individuals are to some degree a captive audience who are less able to improve their lot by changing jobs and employers (and, in so doing, forcing employers to compete with one another for their labor).

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[4] Several independent reviews of these studies arrive at similar summaries. For example, in simulating the economic impacts of the executive actions at issue in this case, the Council of Economic Advisors assumes that wages for newly authorized immigrants would increase by 6% to 10% as a result of formal work authorization. See Council of Econ. Advisors, *The Economic Effects of Administrative Action on Immigration* 20 (2014). The Fiscal Policy Institute summarizes the research on legalization and the unauthorized wage penalty as finding wage effects ranging from 6% to 15%. See David Dyssegaard Kallick, Fiscal Policy Inst., *Three Ways Immigration Reform Would Make the Economy More Productive* 7 (2013).

Third, broader employment opportunities create an incentive for these workers to invest in developing their skills. For example, English language ability and formal educational attainment are rewarded in the U.S. labor market. People with strong English language ability and higher levels of educational attainment earn more than those with poor language skills and less education. Experiencing the returns to these "human capital investments," however, requires access to employment opportunities beyond those offered in the informal sector of the labor market.

A. Providing Work Authorization To Immigrants Permitted To Remain Temporarily in the United States Will Shift Many Workers Into The Formal Economy

Many of the economic benefits of providing work authorization to deferred action recipients are driven by shifting workers from the informal to the formal economy. Under the Immigration Reform and Control Act of 1986 (IRCA), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), employers must make a good-faith effort to verify the identity and eligibility to work of all hires. See 8 U.S.C. 1324a. Employers who violate the verification or recordkeeping requirements, or who knowingly hire unauthorized workers, may face sanctions. *Ibid.* For this reason, many unauthorized workers are currently employed in the informal sector.[5]

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[5] See Annette Bernhardt et al., Nat'l Emp. L. Project, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2010), http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1.

Jobs in the informal economy tend to have low earnings and unregulated work arrangements. Additional observed characteristics of the informal economy include high rates of health and safety violations, lack of worker compensation coverage, discrimination, retaliation against the right to organize, and forced labor.[6]

The best gauge of the proportion of unauthorized workers in the formal as opposed to the informal sectors comes from the Social Security Administration (SSA).[7] The SSA estimates that in 2010 there were 8.3 million unauthorized immigrants working in the United States. Of these, 3.1 million paid into the social security system, yielding the rough estimate that approximately 37% of the unauthorized are in the formal sector.[8]

To be sure, some individuals granted work authorization along with deferred action are unlikely to move

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[6] Sarah Bohn & Magnus Lofstrom, *Employment Effects of State Legislation against the Hiring of Unauthorized Immigrant Workers* 29-30 (Inst. for the Study of Labor, Discussion Paper No. 6598, May 2012).

[7] Stephen Goss et al., *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds*, Actuarial Note #151, Social Security Admin. (2013).

[8] *Id.* at 2-3. Other unauthorized workers who do not pay into the Social Security system but wish to pay taxes may use Individual Tax Identification Numbers issued by the Internal Revenue Service for payroll tax withholding and filing annual tax returns. The authors of one study estimate that at least 50% of unauthorized immigrant households file income tax returns using ITINs. See Lisa Christensen Gee et al., The Inst. on Taxation & Econ. Policy, *Undocumented Immigrants' State & Local Tax Contributions* 2 (2016).

from the informal to the formal sector of the labor market. Indeed, some native-born workers are also employed in the informal sector. These workers tend to be less educated, lower skilled, and earn lower wages.[9] Nonetheless, for immigrant populations that do have a strong attachment to the labor force (*e.g.*, individuals who have lived in the United States for a long time), it can be reasonably anticipated that a large number would seek better employment opportunities in the formal economy. In fact, a recent study found that although DAPA requires only that a person have resided continuously in the United States since before January 1, 2010 (*i.e.*, approximately five years prior to the issuance of the DHS Memorandum), nearly 70% of anticipated beneficiaries have resided here for at least ten years, and 25% for at least 20 years.[10]

B. A Substantial Economic Literature Establishes That Granting Work Authorization Increases Wages

A variety of economic studies focused on different data sets and time periods demonstrate the positive effect of work authorization on wages. One such set of studies looks at changes that resulted from the several occasions when the United States has permitted cate-

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[9] See Kallick at 10 (discussing evidence of participation in the informal economy among various sub-groups of the low wage work force).

[10] Randy Capps et al., Migration Policy Inst. and Urban Inst., *Deferred Actions for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children* 7-8 (2016), http://www.migrationpolicy.org/sites/default/files/publications/DAPA-Profile-FINALWEB.pdf.

gories of unauthorized immigrants to obtain lawful permanent residence.[11] Researchers have studied the effects of allowing unauthorized immigrants to adjust their status to lawful permanent residence under these programs on short-term, medium-term, and long-term employment and earnings outcomes. A second set of studies assess the direct "wage penalty" associated with being unauthorized in the United States. That is, researchers have analyzed the difference in wages between what an unauthorized worker earns and what the same worker would be able to earn if authorized to work legally. In addition to estimating the average wage penalty, this body of research has also investigated the specifics of this penalty and the degree to which it materialized in the form of low returns to human capital among unauthorized workers. These studies are all in accord that authorization leads to a material increase in wages.

1. *Economic Research On The Aftermath Of Past Legalization Programs Establishes The Positive Effect Of Work Authorization On Wages*

The first body of research, regarding legalization initiatives, assesses the effects of work authorization on wages by comparing the before-to-after change in wag-

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[11] The largest of these in scale is the General Amnesty under the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359. In 1997, a smaller set of unauthorized immigrants was permitted to adjust their status to that of lawful permanent residence by virtue of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105-100, 111 Stat. 2160.

es for those who adjust to lawful permanent residence through either IRCA General Amnesty or NACARA to comparable wage changes for comparison groups of workers whose status does not change.

The first comprehensive assessment of the effect of legalization under the 1986 General Amnesty was conducted by the U.S. Department of Labor.[12] The study used a survey of applicants for adjustment under the IRCA Amnesty that included pre-status adjustment information on earnings and employment in 1982, in 1987 (roughly the week prior to application), and five years post-adjustment in 1992. These survey results revealed very high labor force participation and employment rates both prior to adjustment as well as five years later, though employment rates had declined somewhat, as 1992 was in the immediate aftermath of a recession. While the study found that five years out, the newly legalized were still concentrated in low-wage occupations and industries, the degree of occupation and industrial concentration was lower than in the pre-IRCA period, with the formerly unauthorized moving into other industrial sectors and occupations. The study also demonstrated that, in the five years leading up to the passage of IRCA, real wage growth among unauthorized immigrants who qualified for the amnesty was effectively nil. In the five years following the status adjustment, real wages for the same group increased by 15%.

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[12] Shirley J. Smith et al., Div. of Immigration Policy and Res., Dep't of Labor, *Characteristics and Labor Market Behavior of the Legalized Population Five Years Following Legalization* 13-14, 29-34, 43 (1996).

Of course, the improvement in earnings following legalization may have occurred for all workers in the United States regardless of immigration status. In an attempt to isolate the effect of qualifying for the General Amnesty, the labor economists Sherrie A. Kossoudji and Deborah A. Cobb-Clark compared the wage growth experienced by General Amnesty recipients to the wage growth of several alternative comparison groups of native-born workers over the comparable period 1987 to 1992.[13] The authors found that average wages did indeed grow over the same time period for a comparison set of workers. However, wage growth among the newly legalized exceeded the growth of comparison workers by approximately 6.5%. In addition, these authors found that, in the post-IRCA period, formerly unauthorized workers began to experience higher returns to education, and English language ability relative to the returns they experienced before legalization. The authors used their results to simulate the wage penalty associated with being an unauthorized immigrant, finding a lower-bound estimate of 14%.

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[13] Sherrie A. Kossoudji & Deborah A. Cobb-Clark, *Coming Out of the Shadows: Learning about Legal Status and Wages from the Legalized Population*, 20 J. of Labor Econ. 598, 618, 621 (2002). See also Catalina Amuedo-Dorantes & Cynthia Bansak, *The Impact of Amnesty on Labor Market Outcomes: A Panel Study Using the Legalized Population Survey* 14-20 (IZA Discussion Paper No. 5576, Mar. 2011), http://ftp.iza.org/dp6598.pdf; Francisco L. Rivera-Batiz, *Undocumented Workers in the Labor Market: An Analysis of the Earnings of Legal and Illegal Mexican Immigrants in the United States*, 12 J. of Population Econ. 91, 112 (1999). These studies find effects of legalization under IRCA somewhat higher than the 6.5% summary findings from Kossoudji and Cobb-Clark.

A smaller legalization program was implemented in 1997. NACARA permitted certain Nicaraguan and Cuban immigrants who were physically present in the United States continuously since December 1995, as well as certain Guatemalans, Salvadorans, and nationals of former Soviet bloc countries continuously in the United States since 1990, to apply for lawful permanent resident status. Economist Neeraj Kaushal evaluated the effects of NACARA on the employment rates, work hours, hourly earnings, and weekly earnings of immigrants from these nations.[14] The effect on average weekly earnings for all immigrants from eligible countries was relatively modest (4% to 5%), with somewhat larger effects for the relatively more educated (*i.e.*, at least a high school degree). However, taking into account the relatively low application and approval rates relative to the eligible population (only 37% of the eligible Nicaraguans and Cubans and 17% of immigrants from the remaining countries adjusted their status as of the date of publication of this study), the likely effect on hourly wages of those who actually had their status adjusted was estimated to be on the order of 15%.[15]

2. Additional Economic Literature Establishes The Existence Of A Wage Differential Between Unauthorized And Authorized Workers

A second body of research documents the differences in earnings between groups of otherwise similar

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[14] Neeraj Kaushal, *Amnesty Programs and the Labor Market Outcomes of Undocumented Workers*, 41 J. of Human Resources 631, 633-635 (2006).

[15] *Id.* at 643-644.

workers who differ in terms of their immigration status, confirming the findings discussed in Section I.B.1, *supra*. The growth in earnings among the newly authorized contemporaneous with major immigration reform such as IRCA may not provide a fully accurate gauge of the penalty associated with being unauthorized in the post-IRCA period. For example, to the extent that the provisions in IRCA that call for sanctions on employers who knowingly hire unauthorized workers worsened the labor market prospects of unauthorized immigrants, pre-reform wages for the unauthorized may be an overly optimistic benchmark against which to compare wages of legalized immigrants.[16] This second set of studies accounts for these potential issues.

Sociologist Douglas Massey, in a series of papers with colleagues Kerstin Gentsch and Julie A. Phillips, used survey data of Mexican migrants dating back to 1987 to study the earnings penalty associated with being unauthorized.[17] The authors found little evidence of a wage difference between authorized and unauthorized migrants in the pre-IRCA period but a sizable difference thereafter. The authors attributed this disparity to several factors: the fact that knowingly hiring un-

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[16] Before IRCA, it was not unlawful to hire a person who was not specifically authorized to work; IRCA for the first time defined unauthorized workers and created a system to sanction employers who knowingly hire such workers.

[17] Julie A. Phillips & Douglas S. Massey, *The New Labor Market: Immigrants and Wages after IRCA*, 36 Demography 233, 235 (1999); Douglas S. Massey & Kerstin Gentsch, *Undocumented Migration to the United States and the Wages of Mexican Immigrants*, 48 Int'l Migration Rev. 482 (2014).

authorized immigrants became illegal post-IRCA, the increasing use by employers of workforce intermediaries as contractors with the aim of indemnifying against legal risk associated with hiring the unauthorized, and the implicit tax associated with potential monetary sanctions if illegal hiring is detected. The authors estimated that unauthorized workers in the post-IRCA period earn roughly 22% less than otherwise similar authorized workers, and that for the unauthorized, the monetary returns to work experience, education, and English language ability shrink considerably.[18]

Massey and colleagues relied on data collected from migrants who previously returned to communities in Mexico from the United States and individuals in the United States within the social networks of these migrants. Taking an alternative tack, sociologists Matthew Hall, Emily Greenman, and George Farkas analyzed household data collected by the U.S. Census Bureau between 1996 and 2003 to estimate the wage penalty of being unauthorized.[19] The study used the household data to identify pools of unauthorized and authorized Mexican immigrants. The authors then assessed whether the unauthorized suffered a wage penalty after adjusting for educational attainment and labor market experience. The authors found that among Mexican-born men, authorized immigrants earned roughly 17% more than unauthorized immigrants. After adjusting for education and experience, this difference shrank

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[18] Phillips & Massey, 36 Demography at 243-44.

[19] Matthew Hall et al., *Legal Status and Wage Disparities for Mexican Immigrants*, 89 Social Forces 491 (2010).

to 7%. The comparable figures for Mexican-born women were approximately 9% and 3%, respectively. Similar to the other studies reviewed here, the authors found lower returns to education and experience among the unauthorized.[20]

More recently, a joint study by the Migration Policy Institute and the Urban Institute (MPI/Urban Analysis) directly estimated the earnings differences between DAPA-eligible adults and lawful permanent residents using data from the Census Bureau's American Community Survey for the period 2009 through 2013.[21] The MPI/Urban Analysis estimated that the mean annual earnings of DAPA eligible men is $10,000 less than the mean annual earnings of lawful permanent resident men, amounting to a 33% differential. After statistically adjusting for differences in age, educational attainment, and English language fluency, the study found that the annual earnings of DAPA-eligible men fall short of the earnings of comparable lawful permanent resident men by $5,000 (a 16% differential). DAPA-eligible women earn $8,000 less on average than lawful permanent resident women (a 44% differential). Statistically adjusting for differences between these two groups in age, education, and English-language fluency explains most of the gap, with a remaining earnings penalty of $1,000 associated with being an unauthorized woman (a 7% differential).[22]

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[20] *Id.* at 505.

[21] Capps et al. at 15-16.

[22] Hall et al. at 505.

C. Providing Work Authorization To Individuals Granted Deferred Action Creates Additional Economic Benefits to Workers, Employers, and Governments

As described above, economic research establishes that providing work authorization leads to increased wages, on average. It also creates a number of additional economic benefits. These include: (1) increasing incentives for workers to develop skills, for example English language skills; (2) enhancing enforcement of workplace and labor laws; (3) leveling the playing field for both U.S. employers that follow the law and hire authorized workers and for authorized workers who will not have to compete against more easily exploited and undervalued, unauthorized workers; and (4) increasing tax revenue for federal, state, and local governments, as well as Social Security.

Incentives for skill development. The research studies described above documenting the wage increases that generally flow from work authorization find there are particular "wage gap" penalties for unauthorized workers who have more education. An implication of this finding is that work authorization increases the incentives faced by the newly authorized to invest in themselves by completing more formal schooling, participating in workforce development programs, and improving English language fluency. To the extent that work authorization engenders such a behavioral response on the part of the newly authorized, the long-

er-term impacts on earnings may exceed the amounts implied by the research that we have reviewed here.[23]

Enhanced workplace compliance benefiting all workers. Employees who receive work authorization will be able to fully enforce their rights protected by current labor laws, and the related advantages will accrue to all workers, not just unauthorized immigrants themselves. Current labor law requires that companies, *inter alia*, pay minimum wage and overtime, take only legal deductions from paychecks, and not retaliate in response to an employee complaint. Violations of these regulations impact all workers in the labor force, as the willingness to violate labor law confers a competitive advantage in terms of labor costs that may worsen the prospects of firms that abide by the law, as discussed *infra*. Enforcing labor law relies to a great degree on individual workers coming forward and reporting violations. For good reason, unauthorized immigrants are less likely to come forward. A study by the National Employment Law Project of workers in low-wage industries, including unauthorized workers, found that 20% of the workers sampled did not make a complaint, despite experiencing workplace violations.[24] Additionally, 43% of workers who complained about working conditions or attempted to form a union expe-

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[23] Roberto G. Gonzales et al., Am. Immigration Counsel, *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment* 6 (Feb. 2016), http:// immigrationpolicy.org/sites/default/files/docs/daca_at_year_three.pdf ("[Original] DACA gives undocumented immigrant youth a reason to pursue a post-secondary education.").

[24] Bernhardt et al. at 3.

rienced retaliation, including the threat to call immigration enforcement authorities.[25]

A level playing field for U.S. businesses that follow the rules. Expanding work authorization will also have the positive effect of encouraging U.S. businesses to comply with the law. Currently, firms that abide by the law and hire only authorized workers face a competitive disadvantage from peer firms that hire unauthorized workers. A 2012 study documented a 19% decrease in risk of failing for companies that hire unauthorized workers, although the specific impact can vary broadly by sector, with a greater risk of failing observed for sectors relying more heavily on lesser-skilled labor.[26] The same study found that, as more businesses in an industry hire unauthorized workers, the risk of failing increases for businesses that persist in hiring only authorized workers. The work authorization that typically accompanies deferred action will decrease the pool of unauthorized workers, thus reducing the competitive advantage that non-compliant firms enjoy and leveling the playing field for businesses that do play by the rules.[27]

Bolstered Social Security and tax revenues and increased GDP. Increases in work authorization and

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[25] *Id.* at 25.

[26] J. David Brown et al., *Does Employing Undocumented Workers Give Firms a Competitive Advantage?*, 53 J. of Reg'l Sci. 158, 169 (2012).

[27] Adriana Kugler & Patrick Oakford, Center for Am. Progress, *Comprehensive Immigration Reform Will Benefit American Workers* (Sept. 2013).

thus formal sector employment would increase tax revenue and contributions into the Social Security system. Social Security contributions would increase for two reasons: the pool of persons contributing would grow, and those already contributing would earn more and thus contribute greater amounts. An analysis by the economists Adriana Kugler, Robert Lynch, and Patrick Oakford found that putting all unauthorized immigrants on a path to citizenship—admittedly a much larger quantitative and qualitative change than would occur under DAPA and expanded DACA—would, given their age distribution, strong attachment to the workforce, and a subsequent move into the formal sector, substantially reduce the current projected gap between Social Security benefits disbursements and Social Security Fund contributions (by roughly 30% over a ten year period).[28] To be sure, the positive impact on the Social Security fund would be more modest in the event that DAPA and the expanded DACA actions are implemented, since a smaller number of unauthorized immigrants would receive work authorization under these policies and the positive wage effects would be less significant than if those same individuals were

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[28] Adriana Kugler et al., Ctr. for Am. Progress, *Improving Lives, Strengthening Finances: The Benefits of Immigration Reform to Social Security* 7 (June 14, 2013), https://cdn. americanprogress.org/wp-content/uploads/2013/06/SocialSecurityImmigration-2.pdf; Patrick Oakford, Ctr. for Am. Progress, *Administrative Action on Immigration Reform: The Fiscal Benefits of Temporary Work Permits* (Sept. 2014), https://cdn.americanprogress.org/wp-content/uploads/2014/09/ OakfordAdminRelief.pdf.

placed on a path to citizenship.[29] Nonetheless, this analysis is instructive as to the impact that providing work authorization can have on the Social Security system.

Moreover, economists agree that work authorization would increase state and local, as well as federal, tax revenue. One study determined that fully implementing DAPA and expanded DACA would increase state and local tax contributions by approximately $805 million.[30] On the federal side, the Congressional Budget Office and Joint Committee on Taxation have projected that, as a result of the work authorization connected to the DAPA and expanded DACA initiatives, tax revenue would increase substantially more than tax expenditures,[31] and net tax revenues are likely to be even greater in light of recently enacted tax legislation that limits retroactive Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) claims for many of the

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[29] Robert Lynch & Patrick Oakford, Ctr. for Am. Progress, *The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants* 2-3 (Mar. 20, 2013), https://cdn.americanprogress.org/wp-content/uploads/2013/03/EconomicEffectsCitizenship-1.pdf; Silva Mathema, *Infographic: Inaction on immigration is too costly*, Ctr. for Am. Progress (Apr. 9, 2015), https://www.americanprogress.org/issues/immigration/news/2015/04/09/110589/infographic-inaction-on-immigration-is-too-costly/.

[30] Gee et al. at 3.

[31] Cong. Budget Office, Report on H.R. 240, An Act Making Appropriations for the Dep't of Homeland Sec. (Jan. 29, 2015), https://www.cbo.gov/publication/49920.

people who may receive work authorization following a grant of DAPA or expanded DACA.[32]

Research also shows that gross domestic product (GDP) likely would increase at the federal and state levels as well. By one projection, implementation of DAPA and DACA (including expanded DACA) would increase cumulative federal GDP by $230 billion over ten years.[33] States would also see marked increases in cumulative GDP over ten years, including at least $91,885,000,000 total over ten years for the States that are Respondents in this case—Texas, for example, stands to forego approximately $38.3 billion in cumulative GDP gain over 10 years if the deferred action policies are never implemented.[34]

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[32] Protecting Americans From Tax Hikes Act of 2015, Pub. L. No. 114-113, Div. Q, § 204, 129 Stat. 2242.

[33] Silva Mathema, *Assessing the Economic Impacts of Granting Deferred Action Through DACA and DAPA*, Ctr. for Am. Progress (2015), https://www.americanprogress.org/issues/immigration/news/2015/04/02/110045/assessing-the-economic-impacts-of-granting-deferred-action-through-daca-and-dapa/.

[34] Silva Mathema, *State-by-State Analysis of the Economic Impact of DACA, DAPA, and DACA Expansion*, Ctr. for Am. Progress (June 15, 2015), https://www.americanprogress.org/issues/immigration/news/2015/06/15/114894/state-by-state-analysis-of-the-economic-impact-of-daca-dapa-and-daca-expansion/. The sum would likely exceed $91,885,000,000, because data was not available for seven smaller Respondent States, including Alabama, Mississippi, and North Dakota.

II. Allowing DAPA and Expanded DACA Recipients To Obtain Work Authorization Will Provide Critical Economic Opportunities to Families and Households With American Children

The economic issues discussed above are of particular salience to the populations at issue in this case. As the Court is aware, individuals eligible for deferred action under DAPA include the parents of U.S. citizen and LPR children. Individuals eligible for deferred action under expanded DACA include people brought to the United States as children but who are now of working-age. Many of these individuals are key wage earners who contribute disproportionately to household incomes. In addition, many of the households in which they live are low-income, with a relatively large proportion below the poverty line. The wage and earnings benefits associated with work authorization would thus have indirect impacts on millions of U.S.-born children.

In contrast, alternatives to allowing work authorization would have harsh consequences for these households. Subjecting the parents and wage-earners in DAPA households to deportation or the threat of deportation would greatly harm the members of these households, including the U.S. citizen children. And permitting people (especially those likely to be serving as the principal breadwinners for their families) to remain in the country for a period of time without also granting them the ability to request lawful work authorization would necessarily presume either that unauthorized work will occur or that such individuals will be wholly unable to work, not only harming these indi-

viduals but also imposing burdens on their families and communities who would be forced to support them.

A. DAPA-Eligible Parents Play A Critical Role In The Internal Economy Of Households With Millions Of U.S. Citizen Children

The MPI/Urban Analysis provided a detailed empirical portrait of the demographic and economic characteristics of persons who could be eligible for DAPA and their households. The DAPA-eligible parents in these households play a critical role in providing for their families, a role that will only be enhanced through work authorization. Removing these workers from the household would create substantial harms to the internal economies of these families.

The MPI/Urban Analysis estimated that there are 10.2 million people in households that include potential DAPA parents. This includes 4.3 million minor children and 5.9 million adults, of whom roughly 340,000 are DAPA-eligible parents of adult children and 3.6 million are DAPA-eligible themselves. Roughly 85% of the minor children in these households are native-born U.S. citizens, 3% are lawful permanent residents, and the remaining 12% are unauthorized minors. Hence, while DAPA may potentially impact 3.6 million directly, an additional 6.6 million minor children, spouses, and other adults would be indirectly affected by the grant of deferred action and work authorization to a key household member.[35]

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[35] Capps et al. at 5-6.

Most DAPA-eligible parents are long-term residents of the United States, with nearly 70% residing in the United States continuously for ten years and 25% residing in the United States continuously for at least 20 years. Labor force participation rates are generally quite high, especially for male heads of households. The MPI/Urban Analysis estimates that 95% of DAPA-eligible men are in the labor force, with fully 93% employed. Labor force participation is considerably lower for DAPA-eligible women (52%), likely reflecting economic specialization and division of labors within households.[36]

Average annual earnings of DAPA-eligible adults are low, with average annual earnings for men of $30,000 and average annual earnings of women of $19,000. For the entire family, median annual income for families with at least one parent who was potentially eligible for DAPA was $31,000. This was far lower than the figure for the rest of the population, as the median income for all families with at least one immigrant parent was $43,000, and for families with U.S.-born parents, $47,000. Relative to the federal poverty line, 36% of DAPA households are officially poor, compared to 22% of all immigrant families and 14% of households with native-born parents.[37]

To assess the effects of work authorization on DAPA-impacted households, the MPI/Urban Analysis simulated the effect of remedying the wage penalty unauthorized workers face—*i.e.*, a 16% wage boost for

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[36] *Id.* at 7, 14-15.

[37] *Id.* at 2, 15, 17.

DAPA-eligible fathers and a seven-percent wage boost for DAPA-eligible mothers—on household incomes and poverty rates among the households likely to be effected by deferred action. The study estimated that work authorization would lower the proportion of households with DAPA-eligible adults that are below the poverty line from 36% to 30%.[38] According to another study, work authorization would lift 40,000 children in California alone out of poverty.[39]

An alternative manner of characterizing the effects of DAPA is to assess the potential consequences of parental deportation for the household economy. In two-parent households likely to be affected by DAPA, the MPI/Urban Analysis estimated that male earnings account for fully 73% of household income. Hence, the deportation of a father (noting that fathers tend to be principal earners in DAPA households and have a labor force participation rate of 95%) would cause a 73% drop in median family income, shifting the average family from 134% to 49% of the federal poverty line, a change from near poverty to deep poverty.[40] While some of this loss may be offset by increased work hours for the remaining parent, the ultimate impact would be reducing household income substantially, as well as reducing time available to run a household with minor children.

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[38] *Id.* at 17.

[39] Manuel Pastor et al., Univ. of S. Cal. Dornsife Ctr. for the Study of Immigrant Integration, *The Kids Aren't Alright – But They Could Be* 4 (Mar. 2015), https://dornsife.usc.edu/assets/sites/731/docs/DAPA_Impact_on_Children_CSII_Brief_Final_01.pdf.

[40] Capps et al. at 19.

B. Providing Work Authorization To DAPA And Expanded DACA Recipients Also Generates Positive Indirect Economic Effects For The Members Of These Households Who Are U.S. Citizens And Lawful Permanent Residents

In addition to the positive impact that DAPA and expanded DACA would have on the incomes of eligible families and the reduction in poverty that would result, work authorization may provide other economic benefits. These include:

Boosting educational opportunity. By increasing the income of DAPA-eligible families, work authorization improves the socioeconomic status of immigrant parents, thereby increasing the likelihood that their children will perform better at school. Stress likewise impacts education, inhibiting cognitive development, learning, and ultimately, incorporation into the larger American culture.[41] As evidence of this, studies have shown that the legalization of immigrant parents has a significant impact on the amount of schooling that their children pursue—especially for the mother, as according to study by the Advisory Board of the US2010 Pro-

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[41] Manuel Pastor et al., Univ. of S. Cal. Dornsife Ctr. for the Study of Immigrant Integration, *Expanding Opportunity: How California Gains if the President's Executive Actions on Immigration are Implemented* 4 (2016), http://dornsife.usc.edu/assets/sites/731/docs/USC_CSII_Expanding_Opportunity_DAPA_DACA_1C.pdf; Frank D. Bean et al., Russell Sage Found., *Unauthorized Immigrant Parents: Do Their Migration Histories Limit Their Children's Education?* 4-5 (2011), http://www.s4.brown.edu/us2010/Data/Report/report101811.pdf.

ject, the unauthorized status of mothers alone appears to reduce the time their children spend in school by a year-and-a-quarter. Because Mexican immigrants averaged 13 years of education, that year-and-a-quarter difference was the "difference between attending some college and not finishing high school."[42]

Reducing overcrowding. An increase in family income also would help to alleviate overcrowding in DAPA-eligible households. According to the MPI/Urban Analysis, between 2009 and 2013, 36% of potential DAPA households were overcrowded (having more than one person per room), nearly three times the comparable rate for households with all immigrant parents and many multiples the rate for households with U.S.-born parents. Crowded housing is associated with increased risks to children's health, well-being, and development.[43]

Reducing family stresses from workplace abuse. Unauthorized immigrant parents face a greater risk than other parents of workplace abuse, wage theft, subminimum wages, retaliation for organizing efforts, and bars to compensation for workplace injuries.[44] Such stress may carry over into the home with adverse consequences for all household members.[45]

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[42] Bean et al. at 15.

[43] Capps et al. at 12.

[44] *Id.* at 20.

[45] *Ibid.*

Increased access to credit and increased entrepreneurship. Permitting eligible unauthorized workers to apply for work authorization also has the benefit of increasing access to financial credit, which in turn enables previously unauthorized workers to start new businesses. Economic literature suggests that immigrants start new businesses at a higher rate and create more jobs in those businesses than native-born workers.[46]

III. WORK AUTHORIZATION LINKED TO DEFERRED ACTION WILL NOT HAVE AN ADVERSE EFFECT ON NATIVE-BORN U.S. WORKERS AND ALREADY-AUTHORIZED IMMIGRANT WORKERS

As described *supra*, providing work authorization to individuals with deferred action leads to a number of positive economic effects for these workers and those in their households. There is little reason to anticipate countervailing negative economic effects that would counsel against providing work authorization to individuals granted deferred action. The effect of immigration on the wages and employment rates of native-born workers has received a great deal of research attention. While this is a fairly complex subject, the findings from this research can be summarized succinctly and applied to analyze how granting work authorization to individuals eligible for deferred action would impact the labor

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[46] Robert Fairlie, *Immigrant Entrepreneurs and Small Business Owners and their Access to Financial Capital* 1 (SBA, Working Paper No. 396, May 2012); see also David Dyssegaard Kallick, Ams. Society/Council of the Ams. & Fiscal Policy Inst., *Bringing Vitality to Main Street: How Immigrant Small Business Help Local Economies Grow* 5-11 (2015).

market prospects of native-born and other already authorized workers in the United States. This economic research indicates that allowing individuals granted deferred action under the DHS Memorandum to obtain work authorization will not have a negative effect on wages or employment of native-born U.S. workers and already-authorized immigrant workers.

Theoretically, the degree to which immigration impacts the employment prospects of native-born workers depends on (1) the degree to which immigrants and natives are substitutable for one another, and (2) the effect of immigration on a country's stock of productive capital.[47] Substitutability refers to the ability of employers to substitute one type of worker for another. The more similar the workers are in terms of their skills and aptitudes, the greater the degree of substitutability. The less similar, the less able are employers to make such substitutions. Immigrants and the native born in the United States differ greatly in terms of formal educational attainment and language ability and hence tend to be imperfect substitutes.[48] To be sure,

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[47] Gianmarco Ottaviano & Giovanni Peri, *Rethinking the Effects of Immigration on Wages*, 10 J. of the European Econ. Ass'n 152, 153 (Feb. 2012).

[48] Gordon H. Hanson, Council of Foreign Relations, *The Economic Logic of Illegal Immigration* 10, 14 (Apr. 2007); David Card, *Immigration and Inequality*, 99 Am. Econ. Rev. 1, 18 (May 2009); Steven Raphael & Eugene Smolensky, *Immigration and Poverty in the United States*, 26 Am. Econ. Rev. 27, 28 (May 2009); Ottaviano & Peri, 10 J. of the European Econ. Ass'n at 153, 162; Steven Raphael & Lucas Ronconi, *The Effects of Labor Market Competition with Immigrants on the Wages and Employment of*

native-born workers with very low levels of education tend to be more substitutable with low-skilled immigrant labor.[49]

On the other hand, certain immigrant labor is likely to complement, rather than substitute, subgroups of native-born workers, meaning that "certain native workers are likely to be hired in conjunction with the hiring of immigrant workers."[50] For example, as a construction site employs more Spanish-speaking laborers, it may face an increased demand for supervisors, who are likely to be native-born Spanish speakers with higher education and skill. Similarly, as the construction industry benefits from an increase in the supply of low-skilled construction labor, native-born workers whose labor constitute important inputs in the construction industry, such as architects, structural and civil engineers, and skilled craftsmen, will also benefit.[51] As a general rule, those native-born workers and previous immigrants whose skills are most like those of new immigrants are most at risk of being harmed by a new influx of immigrants.[52] On the other hand, those

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Natives: What Does Existing Research Tell Us? 4 DuBois Rev. 413, 416 (Jan. 2007).

[49] Hanson at 4, 14-15.

[50] Raphael & Ronconi, 4 DuBois Rev. at 416.

[51] *Ibid.*

[52] It is unlikely that the DAPA and expanded DACA initiative will create a new wave of immigration into the United States. Research discovered no evidence that the rate of INS apprehensions increased after IRCA was implemented, and IRCA was a much broader initiative. See Katherine M. Donato et al., *Stemming the*

native groups with sufficiently different skill sets are likely to be harmed least and may see their wages and employment improve alongside an increase in immigrant labor.

The accumulation of capital (the machinery, plant, and equipment used in the production of goods and services) in the host economy further mediates the possible effect of immigration on natives. Increases in a country's workforce tend to lead to more capital accumulation, which in turn increases demand for workers of all types.[53]

Given these factors, empirical research on this topic tends to find relatively modest positive effects of immigration to the United States on the average wages and employment of the native-born.[54] Most scholars find that the effects of unauthorized immigration on native wages in particular are likely modest, though still positive, given the very large differences, including in average educational attainment, between these particular immigrants and native-born U.S. workers.[55]

Tide? Assessing the Deterrent Effects of the Immigration Reform and Control Act, 29 Demography 139, 140-141, 155-156 (1992).

[53] Ottaviano & Peri, 10 J. of the European Econ. Ass'n at 186; Raphael & Ronconi at 421.

[54] See Ottaviano & Peri, 10 J. of the European Econ. Ass'n at 152; Council of Econ. Advisers at 2.

[55] David Card, *Is the New Immigration Really So Bad?* 115 Econ. J. 300, 321 (2005); Ottaviano & Peri at 191; Adriana Kugler & Yuksel Mutlu, *Do Recent Latino Immigrants Compete for Jobs with Native Hispanics and Earlier Latino Immigrants? in* Latinos and the U.S. Economy: A Labor Economics Perspective 213

The general research on the effect of immigration on native-born workers described in the prior paragraph, however, would substantially overstate any possible negative effect arising from increasing the number of individuals with work authorization. The conclusions of that research are based in part on the effects of "shocks" to the U.S. labor market associated with the influx of new immigration and how such shocks play out in native wages and employment levels.[56] That circumstance is quite different from the question of the effects of granting work authorization to individuals *who are already residing and working in the United States*. As described above, see Section II.A & n.10, *supra*, most individuals eligible for DAPA and expanded DACA, because of the requirements to apply for these initiatives set forth in the DHS Memorandum, have already been in the United States for a long time. Moreover, many of these individuals are already working and have quite strong attachment to the labor market.[57] As such, granting work authorization to DAPA and expanded DACA eligible households would *not* result in such a "shock" as a large proportion are already working in the U.S. labor market.

(David Leal & Stephen Trejo, eds. 2011) (analyzing influx of Central American immigrants after Hurricane Mitch to southern United States and finding positive impacts on skilled native U.S. workers and small negative impact on unskilled previous immigrants); see also Hanson at 10-12.

[56] Ottaviano & Peri, 10 J. of the European Econ. Ass'n at 157; Raphael & Ronconi, 4 DuBois Rev. at 429.

[57] Capps et al. at 14-15 (95% of DAPA eligible men participate in the labor force).

The most rigorous economic analyses of the effects of providing work authorization to individuals already in the country show there is no reason to believe that doing so would adversely impact native-born and other foreign-born workers via increased labor market competition. A Council of Economic Advisors study determined that "[t]he conservative lower bound of these estimates indicates that these administrative actions will: * * * [h]ave no impact on the likelihood of employment for U.S.-born workers" and will "[r]aise average wages for U.S.-born workers by 0.3% in 2024, or $170 (in today's dollars)."[58] And according to the MPI/Urban Analysis, "providing work authorization through DAPA would have a very modest effect on labor force participation."[59] In sum, especially in light of the characteristics of the population eligible to apply for deferred action, there is no reason to believe that providing work authorization would have a negative effect on the employment or wages of native-U.S. or other already-authorized workers.

CONCLUSION

As explained above, there are substantial economic benefits that arise—to workers, the broader economy and the families of U.S. children—from allowing individuals granted deferred action to apply for work authorization. Conversely, there is no economic reason to allow some unauthorized immigrants to remain in the country for a period of time but nonetheless prohibit

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[58] Council of Econ. Advisers at 2.

[59] Capps et al. at 15.

these individuals from working lawfully while they are present.

Amici defer to others on the legal framework governing immigration enforcement, prosecutorial discretion, and work authorization. As economists, sociologists, and public policy professionals, they conclude that there are strong economic and public policy reasons to permit deferred action recipients, and especially the populations at issue in this case, to obtain work authorization during such period of time as they are permitted to remain lawfully present in the country. Given these meaningful economic benefits, there are strong rationales for why Congress and immigration officials, dating back many years, have chosen to make deferred action recipients eligible for work authorization.

Respectfully submitted,

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APPENDIX

APPENDIX

AMICI CURIAE INFORMATION[1]

Jared Bernstein, Ph.D., is an economist in Washington, DC. From 2009 to 2011, he was the Economic Adviser to Vice President Joe Biden, executive director of the White House Task Force on the Middle Class, and a member of President Obama's economic team. Prior to that, he served in the Labor Department during the Clinton Administration.

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Katharine M. Donato, Ph.D., is a Professor of Sociology at Vanderbilt University. She is the former chair of her department, and she has served on the faculties at Rice University and Louisiana State University. In 2010-13, she was editor of the American Sociological Review.

Shannon Gleeson, Ph.D., is an Associate Professor of Labor Relations, Law, and History at the School of Industrial and Labor Relations at Cornell University. Her research focuses on workplace rights and the experiences of immigrant workers.

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Matthew Hall, Ph.D., is an Associate Professor of Policy Analysis and Management at Cornell University. His research includes a focus on the incorporation of low-skill and unauthorized immigrants into the United States labor and housing markets.

David Kallick is a Senior Fellow at the Fiscal Policy Institute, where he directs the Immigration Research Initiative. He is also a Visiting Assistant Professor at the Pratt Institute School of City and Regional Planning.

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